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SUBJECT: New Congolese press law signed but not yet on the books

¶1. (SBU) Summary: President Kabila signed a new law on December 31, 2009, regulating the media and press in the Democratic Republic of the Congo (DRC). The law establishes a new media regulatory body named the Conseil Supérieur de l'Audiovisuel et de la Communication (Governing Council of Broadcasting and Communications or CSAC), which will replace the transitional Haute Autorité des Médias (Federal Media Authority or HAM). Since the law was signed, it has not yet been published in the official gazette, and many in journalism and civil society either do not know about the law, or are unclear about its provisions. Some observers have expressed concern that the majority coalition seeks to control the process of nominating CSAC board members, and thereby manipulate the new law to their advantage. End summary.

¶2. (U) A long-anticipated change to the government structure regulating the media finally took place when President Kabila signed a new law establishing CSAC, which replaces HAM (established in 2003 by the transitional constitution). The HAM played an important role in monitoring and sanctioning the media during the 2006 elections, registering more than 800 complaints of violation of press laws or social norms, and establishing an ethics commission to respond to irresponsible news reporting during that period. The 2006 Constitution stipulated that a permanent media regulatory body be established, which this new law does. PAS Kinshasa spoke with a wide range of working journalists, officials of media organizations, and civil society leaders. All were satisfied with the law as written, but many expressed concerns that the law might not be applied in a non-partisan and democratic manner.

"Guarantee freedom of press"

¶3. (U) According to the new law, CSAC's responsibilities are: "guarantee the freedom and protection of the press as well as all mass communications media according to the law; oversee the respect of journalistic ethics; and oversee equal access to official information and communications to political parties, organizations and individuals." CSAC is responsible for monitoring the content of media communications and sanctioning violations, while the Government of the DRC (GDRC) maintains responsibility for regulation and licensing. CSAC will have an advisory role concerning any new laws regulating the media and communications technology.

Governing Board makeup

14. (U) The new media regulatory commission will be governed by a board of directors, consisting of 15 members, nominated in the following fashion: one by the president; two by the national assembly; two by the senate; one by the government (prime minister); one by the Council of Magistrates; three by professional media organizations; one from the advertising sector; one by the national bar association; one by the national organization of parents of students; and two by press freedom organizations. The nominees from the national assembly and senate are to include one each from the presidential majority and the opposition. The nominees from the professional media organizations are to include one representative from television, radio and the printed press. Upon confirmation by the parliament, all board members are required to refrain from any business, professional or political activities that might present conflicts of interest.

Funding in doubt

15. (SBU) Board members are supposed to be remunerated for their

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work, and the organization is to be supported by government funds, although some press observers express skepticism that funds will be available for either salaries or operating expenses. The law includes a provision for CSAC to solicit funds from outside sources; officials from the press freedom NGO Journalists in Danger (JED), among others, hope that international donors will contribute to CSAC's budget, particularly during the elections. (Note: The HAM recently approached PAS Kinshasa with a proposal for funding of their media monitoring center, which was severely under-resourced. With 82 television stations and 280 radio stations across the DRC, effective monitoring is probably beyond the capacity of even a robustly funded operation. End note.)

On the books, or off the record?

16. (SBU) While the law was signed on December 31, 2009 and read aloud on GDRC television station RTNC on January 2, it has yet to be published in the official record. Several attempts by members of the press, political opposition, and civil society to obtain a copy of the signed law have been unsuccessful. Donat Mbaya, JED president, spoke with the RTNC journalist who read the law on television, and was told that it could not be distributed until published in the official record. The law itself states that it will take effect upon promulgation, but there is ambiguity concerning whether or not a law needs to be published in the official record before it is considered promulgated, and therefore questions about this new law's statutory authority. Mbaya told emboff that without publication in the official record, the law is not yet in force, and he believes that the president's allies feel the promulgation requirement has been fulfilled by the RTNC broadcast, even if the law remains unavailable to the press and public.

Strategic dysfunction

¶7. (SBU) In conversations with emboff and PAS local staff, several leading editors, journalists and members of professional organizations have expressed concerns that the law has not been made public. Very few journalists attending the MONUC press conference on January 13 were aware of the bill, and once informed about it by PAS local staff, were very interested in learning more. Donat Mbaya of JED fears that the presidential majority is maneuvering to control the nomination process of board members, and he is not alone. Another JED staffer sees a certain "strategic dysfunction," where lack of legal clarity serves the purposes of presidential power. Polydor Muboyayi (strictly protect), editor of the newspaper "Le Phare" and president of Observatoire des M????dias Congolaises (Congolese Media Monitoring Group or OMEC), an ombudsman organization of professional journalists, told PDO on January 13: "The media are now subject to this law, but they don't know what the law says." Muboyayi sees this as "a trap," where the presidential majority will wait until the nomination deadline (unspecified in the draft legislation in PAS Kinshasa's possession) expires, and then nominate friendly or malleable candidates to the Board. At least one candidate, Jean-Chr????tien Ekambo, former dean of the journalism school IFASIC, is already lobbying for presidency of the CSAC board, and has asserted to JED President Mbaya that he will be nominated to the seat reserved for the presidential party's National Assembly selection. Note: End note.

¶8. (SBU) Comment: CSAC will play an important role in the national elections scheduled for autumn 2011, and the selection of its leadership will, to a large extent, determine how its responsibilities will be fulfilled. Modeste Mutinga, owner of the newspaper "Le Potentiel," served as president of HAM during the 2006 elections, and while some criticized him for being harsh or partisan, "media professionals admit, almost unanimously, that HAM played an important role in ensuring that the elections went well," wrote Marie Soleil Frere, a Brussels-based expert on the DRC media, in 2008. If CSAC is governed by a responsible and non-partisan board, and receives sufficient resources, CSAC could significantly

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contribute to a free and responsible press in the DRC. On paper, the law codifies the new media regulatory apparatus and guarantees certain press freedoms, yet its application is vulnerable to political manipulation. PAS Kinshasa will monitor the situation and work with contacts in the international, journalistic, political and civil society communities to support efforts to ensure that the law is first officially disseminated and then applied justly. Embassy Kinshasa will participate in a January 26 meeting of international donors to discuss the CSAC and other relevant press issues. End comment.
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